



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 1769-99

12 November 1999

AD [REDACTED] USN  
[REDACTED]

Dear Petty O [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

You requested removal of your enlisted performance evaluation report for 16 March to 17 November 1998, and reinstatement of your eligibility for advancement to pay grade E-6 from advancement cycle 159.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 10 November 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Navy Personnel Command dated 30 August 1999, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion in finding that your contested evaluation should stand. They were unable to find that you had a "verbal agreement" with your executive officer that if you testified at a court-martial against other enlisted members and accepted a specific nonjudicial punishment, your advancement to E-6 would not be affected. They were likewise unable to find that your service record page 13 concerning the withdrawal of your recommendation for advancement was backdated to 17 November 1998. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosure



**DEPARTMENT OF THE NAVY**  
**NAVY PERSONNEL COMMAND**  
**5720 INTEGRITY DRIVE**  
**MILLINGTON TN 38055-0000**

1610  
PERS-311  
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MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00XCB)

Subj: AD2 JAMES [REDACTED] ER, USN, [REDACTED]

Ref: (a) BUPERSINST 1610.10, EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests removal of his performance report for the period 16 March 1998 to 17 November 1998.

2. Based on our review of the material provided, we find the following:

a. A review of the member's digitized record revealed the report in question to be on file. The member signed the report indicating his desire not to submit a statement. Per reference (a), the member has two years from the ending date of the report to submit a statement if desired. A statement has not been received from the member.

b. The report in question was submitted on the occasion of the member's detachment from the command, and to withdraw the member's promotion recommendation. The report comments on the member being awarded Non-Judicial Punishment (NJP) on 28 May 1998. The report was prepared per the guidelines outlined in reference (a), and is a valid report.

c. The member alleges the report in question was not referred to him for comment as required by reference (a). Formal referral by letter of an adverse report is strongly encouraged in reference (a), Annex O, but is not mandatory and is at the discretion of the reporting senior. The member's signature in block 51 acknowledged his right to make a statement in accordance with regulations. The absence of formal referral does not violate the member's rights or invalidate the report.

d. The member states that the removal of his promotion recommendation is in contradiction with the Navy and Marine Corps

Subj: AD2 JAMES [REDACTED] ER, USN, [REDACTED]

Achievement Medal awarded to him for superior performance before, during, and after his NJP. The promotion recommendation reflected in block 45 represents the reporting senior's appraisal of the member's readiness for the duties of the next higher paygrade. It is made at the discretion of the reporting senior and is not required to be consistent with other recommendations or routinely open to challenge.

e. The member does not prove the report to be unjust or in error.

3. We recommend retention of the report as written.

[REDACTED]

Head, Performance  
Evaluation Branch